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ABSTRACT

This booklet summarizes the available information on the reasons for and the extent of the effects of declining enrollment and inflation-strained budgets on women and minorities in education. The combined impact of inflation and recession has led to the reassessment of priorities and the curtailment of services known in elementary and secondary education, as well as in postsecondary education, as retrenchment. Although information in some areas is incomplete, the data contained in this report indicate trends in reduction in force, the granting of tenure, unemployment, collective bargaining, and the demand for teachers, as well as employment trends among women and minorities. The authors conclude that more successful remedies to eliminate inequities affecting women and minorities must be found. (Author/DS)

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RETRENCHMENT IN EDUCATION: THE OUTLOOK FOR WOMEN AND MINORITIES

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

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Report No. F76-9

Education Finance Center
Department of Research and Information

Equal Rights for Women in Education Project
Department of Elementary and Secondary Education

Education Commission of the States
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Additional copies of this report may be obtained from the Education Finance Center.

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This booklet is based on a report by Bella Rosenberg, a doctoral student in education and social policy at the Harvard Graduate School of Education, to the ECS Equal Rights for Women in Education Project. Phillip E. Vincent, Senior Economist at the Education Finance Center of the Education Commission of the States, was responsible for editing the report for this booklet.

This booklet is the result of a cooperative effort between the Equal Rights for Women in Education Project and the Education Finance Center.

A related publication containing a review of case law pertaining to the issues covered in this booklet has been published by the Equal Rights for Women in Education Project and is available from the ECS Publications Desk for $1.50.

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FOREWORD

This publication is one of a series of school finance policy studies that the National Institute of Education (NIE/DHEW) is supporting at the ECS Education Finance Center. It draws upon the center's technical assistance activities with state legislatures and governors, as well as its demonstrated knowledge in this important field. NIE's sponsorship of this work is based on our conviction that the major burden for school finance reform now falls on the nation's legislators and governors and that "goal oriented" research of this kind will lead to a more informed and productive debate on the subject of school finance reform.

The emergence of this key role for state legislators and governors is the product of a series of important and far reaching court decisions. Beginning with the Serrano decision in California, a number of state courts have directed state legislators and governors to reconstruct the ways in which education resources are raised and distributed. In light of this state focus, it is particularly appropriate that ECS undertake research of this kind.

We at NIE hope this publication will serve the needs of legislators, governors, state and local education officials and interested citizens and thereby assist in the development and implementation of more equitable and effective systems of school finance.

Denis P. Doyle
Chief, School Finance and Organization
National Institute of Education

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INTRODUCTION

Elementary/secondary and postsecondary education systems have been caught in a closing economic vise during the last five years. Since the downturn of 1970 and particularly with the onset of the deep recession of 1974, financial pressures on education institutions have been severe; rapid inflation has made matters worse. Since around 1970, enrollment in elementary schools across the nation has declined. In secondary schools and postsecondary institutions enrollment has begun to level off, bringing to an end the era when growth was both the challenge and the boon to educators.

To many observers, declining enrollment should be an opportunity, not a tragedy. In years past, schools and teaching staffs have been expanded to keep up with increasing numbers of students. Not so many years ago, the major issue in education was overcrowding; building schools and educating more teachers was the order of the day, particularly in the burgeoning suburbs. Education required growing proportions of state and local government budgets. Now with decreasing enrollments and existing fixed capital, as well as available teaching staff, it is perhaps possible to increase the quality of education.

However, declining enrollments occurring simultaneously with recession and inflation have resulted in major difficulties rather than opportunities in education. Teachers at all levels have seen the job market dwindle. Elementary school teachers have been in excess supply; recent Ph.D.s intending to be college teachers have switched careers or faced unemployment. Although pupil-teacher ratios have tended to fall in declining enrollment school districts, the reduction in number of students has been greater, thus decreasing the number of teaching positions available.[1]

Educators have come to refer to the result of these pinched budgets and declining enrollments as "retrenchment." The Oxford English Dictionary defines "retrenchment" in two ways: 1) "The act of cutting down, off or out; curtailment, limitation, reduction" and 2) "A work, generally consisting of a trench and parapet, constructed for the defense of a position; esp. an inner line of defense within a large work." In the United States today, both definitions are apt. Educa-

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[1] For a detailed discussion of declining enrollments and its fiscal impacts in four states, see Allan Odden and Phillip E. Vincent, *Fiscal Impacts of Declining Enrollments: A Study of Four States – Michigan, Missouri, South Dakota and Washington* (Denver, Colo.: Education Commission of the States, December 1976).

tors are being asked to curtail, limit and reduce programs and budgets. And, as educators trim their budgets, they also may have a sense of fortifying and defending "an inner line of defense within a large work."

Retrenchment has been widespread. A survey of education departments in 32 states and the Virgin Islands by the Education Commission of the States (ECS) notes the pervasive inflation-caused cutbacks in the schools.[2] Evidence on the implications of retrenchment in higher education is not as firm. Higher education has been either less willing or less able to implement retrenchment, except in its employment practices. Based on their case studies of five systems of higher education, Bowen and Glenny report the warning signals of retrenchment: "Classrooms are less well heated, fewer library books are acquired and some building maintenance is neglected."[3] Initial reductions are generally across the board, with little attention to particular programs and priorities.

This booklet attempts to summarize information on the reasons for and the extent of the effects of declining enrollment and inflation-strained budgets on women and minorities in education. Section I examines the economic difficulties and enrollment declines that will affect elementary/secondary and postsecondary education in the United States. Section II discusses information on how women and minorities have been affected in selected areas by the declining employment opportunities in education. The lack of direct information requires drawing inferences from related data such as the present status of women and minorities in education. Section III focuses on how seniority and tenure issues have conflicted to a large extent with affirmative action goals. Section IV summarizes policy proposals for aiding women and minorities faced with new barriers to equal employment opportunity in education.

Since retrenchment in education is a recent event, data on its effects on women and minorities are quite scarce. Most conclusions tend to be speculative and tentative. Furthermore, plans to deal with the human and financial aspects of declining enrollments only now are being drafted. A major focus of this booklet is the development of a range of policy alternatives to deal with problems related to retrenchment.

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[2] Education Commission of the States, "Widespread Educational Cutbacks Reported by States," news release, Oct. 27, 1974.

[3] Frank M. Bowen and Lyman A. Glenny, *State Budgeting for Higher Education: The Response of Public Higher Education to Fiscal Stringency* (Berkeley, Calif.: University of California, Center for Research and Development in Higher Education, 1976).

I. THE BASIC DIMENSIONS OF RETRENCHMENT

Retrenchment in education has multiple causes and a variety of impacts. Recession and inflation have produced immediate problems; declining enrollments have long-term repercussions. Simultaneity of financial stringency and decline have helped reduce the total demand for teachers and sharply decreased the upward trend in their employment of past years, resulting in many instances in layoffs of education personnel.

Inflation and Recession

Average per pupil expenditures for elementary and secondary education rose $115 during 1975-76 to $1,284.[4] In 1976 schools and colleges spent approximately $119 billion, up $1 billion from the previous year.[5] But reports of rising expenditures are deceptive. The true story for education may be one of stagnation or decline, not of growth, because much of the increase in expenditures can be attributed to inflation.

While education expenditures have risen 132 percent since the 1967-68 school year, the Consumer Price Index (CPI) has increased 59.3 percent during the same period, thus accounting for nearly half the growth.[6] The remaining portion of expenditure increases can be explained by salary settlements with teachers, as well as growth in faculty until the more recent downturn. With respect to teachers' wages, average instructional salaries rose, in absolute dollars, from $10,213 in 1971-72 to $11,950 in 1974-75, an increase of $1,737 or 17 percent, implying an annual increase of around 5 percent over the three years. But according to the National Education Association (NEA), the purchasing power of what teachers earned actually decreased by nearly $546 from $8,455 in 1971-72 to $7,909 in 1974-75.[7]

The recession has also had an impact on state and local tax revenues. A survey conducted by the Education Commission of the States indicated that state legislatures' appropriations for education have dramatically failed to keep pace with inflation. Education budgets in 1974 would have had to rise a full 12 percent to meet the spiraling costs of inflation, even without new program growth. Yet, 21

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[4] *Education Digest*, 43 (September 1976), p. 66.

[5] *Education USA*, 18 (September 1975), p. 1.

[6] *Education Digest*, 42 (September 1976).

[7] NEA Research, *Financial Status of the Public Schools, 1975* (Washington, D.C.: National Education Association, 1975), p. 12.

state education agencies received increases of 8 percent or less for all operating expenditures. Even this figure is conservative, since it does not provide for pay increases or other costs that arise from collective bargaining demands.[8]

The school fiscal crisis is particularly acute in the cities. The Council of the Great City Schools has noted that because the urban employment rate is twice the national average, city government revenue-raising capacities have been severely impaired as their expenses have dramatically increased.

In higher education, too, the halcyon days seem to be over. According to the Carnegie Foundation for the Advancement of Teaching, "Higher education is suffering from the most severe deceleration of growth in U.S. history."[9] Between 1973-74 and 1974-75, the Higher Education Price Index (HEPI), an index of budgetary items of colleges and universities, exhibited the highest year-to-year change in the past 13 years, increasing 8.6 percent.[10]

Overall state appropriations, which account for slightly more than half of all current revenues for state and land-grant institutions, increased at a faster pace than the HEPI, 9.4 percent in 1974-75. Nevertheless, these funds proved inadequate to the task of educating the additional students represented by a 4.1-percent increase in enrollment.

Declining Enrollments

If the future of the economy is still in doubt, the trend of enrollment in education is not. The prognosis is decline. According to the National Center for Educational Statistics (NCES), total fall enrollment at all levels of education increased from 53 million in 1964 to 60 million in 1974. But as a result of low birth rates during the mid to late 1960s, total enrollments are expected to decline considerably until the 1980s, decreasing to 56 million in 1984.[11]

The most severe enrollment declines will occur at the elementary and secondary levels. (See Table 1.) Fall enrollment in regular elementary and secondary schools increased during the growth

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[8] Education Commission of the States, "Widespread Educational Cutbacks Reported by States."

[9] Jack Magarrel, "Higher Education's Severest Slowdown," *Chronicle of Higher Education*, 21 (April 1975).

[10] Ione Phillips, *A Question of Quality* (Washington, D.C.: National Association of State Universities and Land-Grant Colleges, n.d.), p. 6.

[11] Martin M. Frankel and Loraine L. Simpson, "Enrollment," in *Projections of Educational Statistics to 1984-85*, National Center for Educational Statistics (Washington D.C.: U.S. Department of Health, Education and Welfare, 1976), p. 11.

Table 1

Enrollment in Grades K-8 and 9-12 of Regular Day Schools, by Institutional Control: United States, Fall 1964 to 1984

(In Thousands)

Year (Fall)	Total Public and Nonpublic			Public		
	K-12	K-8	9-12	K-12	K-8	9-12
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1964	47,716	35,025	12,691	41,416	30,025	11,391
1969	51,119	36,797	14,322	45,619	32,597	13,022
1974	49,756	34,419	15,337	45,056	30,919	14,137
1979	46,200	31,100	15,100	42,000	28,100	13,900
1984	44,300	31,500	13,300	40,600	28,500	12,100

Source: Martin M. Frankel and Loraine L. Simpson, "Enrollment" in *Projections of Education Statistics to 1984-85*, National Center for Educational Statistics (Washington, D.C.: U.S. Department of Health, Education and Welfare, 1976), p. 8.

years, 1964 to 1969, from 47.7 million to 51 million. By 1974, enrollment had dropped by 1.5 million to 49.8 million. By 1984, enrollment is projected to decrease by another 5.0 million to 44.8 million.[12] Thus, enrollment is projected to decrease by 12 percent from 1974 to 1984.

Secondary school enrollment decline is expected to be more severe. Enrollment in grades 9 through 12 increased from 12.7 million in 1964 to 15.3 million in 1974. Expected to remain somewhat constant through 1978, enrollment will decrease sharply to 13.3 million by 1984, or by 13 percent from 1974 to 1984. Enrollments are thus expected to decline for at least the next 5 to 6 years in elementary education and for approximately 15 years in secondary education.

School districts most severely affected by enrollment declines are those hardest hit by other fiscal and social problems: the central cities. According to a survey by the Syracuse Research Corporation:

> When state education departments were asked where they expected the greatest decline to occur in the next five years,

[12] These figures exclude such public and nonpublic residential schools as institutions for exceptional children, subcollegiate departments of public and nonpublic institutions of higher education, federal schools for Indians, federally operated schools on federal installations, an estimated 1.9 million children between the ages of 3 and 6 enrolled in independent nurseries and kindergartens and an estimated 1.2 million in special private schools.

officials in 17 of the 37 states responding to that question indicated the most severe decline would be in the state's largest city with another six indicating the largest city would rank second among areas experiencing severe declines. Twenty-one states indicated that the largest city and second-order cities (next five largest) were ranked first and second.[13]

In higher education, enrollment declines are not as dramatic as those in elementary and secondary education. But the large annual enrollment increases that marked the 1960s appear to have ended. Except for nondegree-granting programs and junior colleges, enrollment in higher education is expected to level off in the next decade. Total enrollment in all institutions of higher education nearly doubled between 1964 and 1974, increasing from 5.3 million to 10.2 million. But by 1984, enrollment is expected to grow only to 11.6 million or by 14 percent over 1974.

The above projections are based on the assumption that the percentage of all people ages 18 to 21 that are enrolled in full-time undergraduate or unclassified programs remains at its 1974 level through 1984. But the 1970s have witnessed a less hospitable labor market for persons with college and advanced degrees and some argue that the depression will continue.[14] In addition, planners in higher education hope to offset the declining number of younger students by attracting greater numbers of adult learners. However, as Cartter and Solmon point out, it takes four to six part-time adult students to replace financially one full-time undergraduate.[15]

Demand for and Supply of Teachers

The demand for and supply of teachers can be expected to have a direct impact on women and minorities. During the period 1970-74, the demand for additional public elementary and secondary school teachers (those not employed in public schools the previous year) was estimated at 974,000, or an average of 114,000 per year. During 1975-79 demand is expected to decrease to 837,000 and then remain relatively stable at about 845,000 during 1980-84. (See Table 2.) At the elementary level, the total number of teachers employed in 1984 is expected to be about the same as the number in 1974. At the secondary level, however, the total number of teachers employed in 1984 is expected to be 93,000 fewer than in 1974.

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[13] Robert J. Goettel and Dana W. Paige, *Declining Enrollments: A Report Prepared for the National Association of State Boards of Education* (Syracuse, N.Y.: Syracuse University Research Corporation, 1976), p. 6.

[14] See, for example, Richard B. Freeman, *The Overeducated American* (New York: Academic Press, 1976).

[15] Alan M. Cartter and Lewis C. Solmon, "Implications for Faculty," *Change*, 8 (September 1976), p. 38.

Table 2
Estimated Demand for Classroom Teachers in Regular Public Elementary and Secondary Day Schools: United States, Fall 1969 to 1984*

(In Thousands)

Year (Fall) (1)	Total Teacher Demand (2)	Demand for Additional Certificated Teachers** Total (3)	For Enrollment Changes (4)	For Pupil-Teacher Ratio Changes (5)	For Teacher Turnover (6)
69	2,013	...	...	...	...
74	2,159	192	-19	40	171
70-74	...	974	-14	159	829
		Projected***			
79	2,130	147	-46	21	172
75-79	...	837	-143	114	868
84	2,134	198	13	17	168
80-84	...	845	-83	87	841

* Includes full-time and the full-time equivalent of part-time classroom teachers (in 1974, 99 percent of teachers in the public schools were full-time). The 1969 data include some part-time teachers who were not converted to full-time equivalents. Does not include teachers in independent nurseries and kindergartens, residential schools for exceptional children, subcollegiate departments of institutions of higher education, federal schools for Indians, federally operated schools on federal installations and other schools not in the regular school system.

** The estimates and projections of demand for additional certificated teachers were based on the following assumptions: (1) For changes in pupil-teacher ratios, the number of additional teachers needed is the total teacher demand in a given year less the estimated total teacher demand in the same year had the pupil-teacher ratio in the previous year remained constant. (2) For enrollment changes, the number of additional teachers needed is the total needed for both enrollment changes and pupil-teacher ratio changes less the number needed for pupil-teacher ratio changes alone; the number of additional teachers needed for both enrollment changes and pupil-teacher ratio changes is the total teacher demand in a given year less the total teacher demand in the previous years. (3) For teacher turnover, the number of additional teachers needed to replace those leaving the profession either temporarily or permanently will be 8 percent of the total employed in the previous year; the 8 percent separation rate is based on the Office of Education study *Teacher Turnover in Public Schools, Fall 1968 to Fall 1969.*

The projected demand makes no allowance for replacement of teachers who hold substandard certificates (less than 2 percent of employed teachers in 1972).

*** The projection of classroom teachers in public schools by organizational level and institutional control is based on the assumption that the pupil-teacher ratio will follow the 1964-74 trend to 1984.

Source: National Center for Educational Statistics, *Projections of Education Statistics to 1984-85*, (Washington, D.C.: U.S. Department of Health, Education and Welfare, 1976), p. 63.

Whether the major oversupply of teachers will persist is an open question. The number of students enrolled in teacher-training programs is waning. A recent survey by the American Council on Education (ACE) and the University of California at Los Angeles concluded that in 1966, 21.7 percent of all freshmen wished to enter teaching; by 1975, the figure plummeted to 8.2 percent; and, by 1976, it was 6.5 percent.[16] Even at this rate of decline, however, the oversupply of teachers is expected to continue, unless better employment information is disseminated to prospective teachers.[17]

In higher as well as elementary/secondary education, teaching will no longer be a growth industry. During the past decade, as college enrollment increased dramatically, employment of college teachers increased proportionately. (See Table 3) Over the next decade this growth will be slowed considerably. Cartter and Solmon provide a pessimistic set of projections that range to the 1990s.[18] Estimating that between 1980 and 1994 there will be a 25-percent decline in the number of people in the traditional college-age group and a 1.8 million drop in enrollment, they conclude that **total** faculty size will be reduced by 100,000. They further predict that, despite falling enrollments, higher education's financial plight will force student/faculty ratios above the traditional figure of 15:1. Such an increase would reduce demand for faculty still further.

The forecast for supply of new Ph.D.s illustrates the severely shrinking job market. Cartter and Solmon estimate that from now until the end of the decade, approximately 41,000 new Ph.D.s will be produced every year. Therefore, total academic demand will be about one-third of the graduate school supply over the next few years. An increasing number of Ph.D.s who may aspire to positions in colleges or universities may have to seek employment elsewhere.

Layoffs

Although no national information documents the number of layoffs that have occurred, local accounts suggest that they are of considerable magnitude. In 1974 the troubled New York City government ordered the city's department of education to cut its budget by $132 million and indicated that those cuts might have to be doubled.

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[16] Alexander Astin, et al., *The American Freshman: National Norms for Fall, 1976* (Los Angeles, Calif.: Cooperative Institutional Research Program, 1976).

[17] William S. Graybeal, "Status and Trends in Public School Teacher Supply and Demand," *Journal of Teacher Education*, 25 (Fall 1974), p. 208. See also the Comptroller General's Report to the Congress, *Supply and Demand Conditions for Teachers and Implications for Federal Programs*, Office of Education, B165031 (Washington, D.C.: General Accounting Office, 1974).

[18] Alan M. Cartter and Lewis C. Solmon, "Implications for Faculty," p. 37.

Table 3

Estimated Full-Time-Equivalent Instructional Staff for Resident Courses in all Institutions of Higher Education, by Professional Rank: United States, Fall 1964 to 1984*

(In Thousands)

Year (Fall) (1)	Estimated Total Full-Time Equivalent (2)	Instructor or Above			Junior Instructor		
		Total (3)	Full Time (4)	Full-Time Equivalent of Part-Time (5)	Total (6)	Full Time (7)	Full-Time Equivalent of Part-Time (8)
1964	274	243	212	31	31	12	19
1969	431	382	349	33	49	15	34
1974	493	450	411	39	43	9	34
				Projected**			
1979	552	504	460	44	48	10	38
1984	541	494	451	43	47	10	37

*Estimated

**This projection of full-time equivalent of part-time instructional staff for resident courses is based on the following assumptions: (1) Full-time equivalent of part-time instructor or above will remain constant to 1984 at the 1972 level of 31.0 percent. (2) Full-time equivalent of junior instructional staff will remain constant through 1984 at the 1972 level of 38.8 percent.

Note: Data are for 50 states and the District of Columbia for all years. Because of rounding, details may not add to totals.

Source: Martin M. Frankel and Loraine L. Simpson, "Enrollment," in *Projections of Educational Statistics to 1984-85*, National Center for Educational Statistics (Washington, D.C.: U.S. Department of Health, Education and Welfare, 1976), Table 33.

Some 16,000 jobs in education were scheduled for elimination.[19] By January 1976, 9,000 teachers had been dropped, and an additional 1,300, mostly high school teachers, were scheduled for layoffs.[20] The United Federation of Teachers (UFT) reports that the New York school system in 1976 had 8,000 fewer teachers, approximately 4,000 due to layoffs, the rest due to retirement and normal attrition. Most of these positions are remaining vacant..

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[19] *Education USA*, 19 (June 2, 1975), p. 231.

[20] Leonard Buder, "Board Seeks Change of Teacher Seniority Law That Could Bring Recall of Some Laid Off," *New York Times*, Jan. 1, 1976.

II. THE IMPACT OF RETRENCHMENT ON WOMEN AND MINORITIES

It is difficult to get a good picture of how retrenchment is expected to affect women and minorities. Data on teachers who are terminated or laid off are difficult to obtain. National and statewide statistics are scanty, and terminological differences from state to state make comparisons difficult. In some cases, failure to renew the contracts of probationary or nontenured teaching personnel is not labeled a termination or layoff, nor is failure to fill a position vacated by natural attrition. Termination is a term generally reserved for tenured teaching personnel; as a result, data on termination and layoffs represent only a fragment of total retrenchment in education employment.

Efforts to determine who is bearing the burden of retrenchment by surveying state departments of education and state agencies of higher education have been unsuccessful. Most agencies are not breaking down retrenchment data by sex and race. Such information is politically and socially sensitive, and many agencies may be avoiding a volatile issue. State agencies relegate these requests to the local school district and to the individual college or university. However, efforts to survey school districts and institutions of higher education on the number of layoffs due to financial cutbacks and/or the race and sex characteristics of those terminated also have been unsuccessful. Researchers contacted approximately 20 retrenched school districts identified by the NEA and the AFT with requests for information about the terminated teaching population. Only a few provided satisfactory responses.

This section, then, must rely primarily on isolated statistical reports and anecdotal information. Two things should be borne in mind. First, length of service is generally the criterion used to determine who is to be laid off; therefore, one supposes that women, especially in higher education, and minorities, in general, who have only recently been hired are heavily represented among those laid off. Second, this section does not include information on the number of jobs that would become available if the economy regained health or on the number of unfilled job listings that have been dropped. A focus on layoffs and seniority should not obscure the fact that the prime culprit in eroding or denying opportunities to minorities and women is general cyclical or structural unemployment.

The Status of Women and Minorities in Education

Since data on layoffs of women and minorities are sparse, a review of their status helps one draw inferences about what is occurring and what may occur.

Elementary and Secondary Education. According to the latest figures from the United States Equal Employment Opportunity Commission (EEOC), in 1974 women accounted for 64.3 percent of public school employees and only 39 percent of the civilian labor force. Blacks, at 12.5 percent, also were better represented in education than in the civilian labor force as a whole, of which they comprised 9.9 percent.[21] Despite blacks' relatively high rate of participation in education, the percentage of minority teachers was approximately one half the percentage of minority students.[22] The figures for other minority groups taken into account by the EEOC were as follows: Hispanic, 2.5 percent of education and 4.4 percent of the civilian labor force; Asian-American, 0.4 percent of education and 0.8 percent of the civilian labor force; and American Indian, 0.3 percent of education and 0.4 percent of the civilian labor force.

Within the education infrastructure, however, women and minorities are concentrated in lower-status, lower-paying positions. Women account for 98.6 percent of kindergarten and prekindergarten teachers, 85.4 percent of elementary school teachers, 49.2 percent of secondary school teachers and 31 percent of college and university teachers. (See Table 4.) Nearly all teacher aides and clerical/secretarial staff members are women. In the administrative areas of the school employment ladder, women account for only 14.1 percent of all administrators and 12.7 percent of principals.[23] Such data do not always indicate discrimination in hiring and promoting. For example, federal and state programs over the past 10 years have rapidly increased the use of teacher aides, many of whom are, quite intentionally, women and minority group members who otherwise may not have been employed, at least in the school system.

Minorities are similarly concentrated in the lower job echelons. Minority group members comprise 33.5 percent of all teacher aides,

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[21] U.S. Equal Employment Opportunity Commission, "EEOC Releases 1974 Employment Figures," news release, April 30, 1976, pp. 1-2.

[22] National Center for Educational Statistics, *The Condition of Education: A Statistical Report on the Condition of American Education, 1975* (Washington, D.C.: U.S. Department of Health, Education and Welfare, 1975), p. 71.

[23] Recruitment Leadership Training Institute, *Women in Administrative Positions in Public Education* (Philadelphia, Pa.: Temple University, 1974), pp. 7-11.
This dearth of women in administrative positions is recent. Women were once well represented in school administrations. In 1928, 55 percent of elementary school principalships were held by women; in 1948, the figure was 41 percent; 1958, 38 percent; 1968, 22.4 percent; and 1973, 19.6 percent. The trend is similar for assistant elementary school principals: in 1968, approximately 38.4 percent of assistant principals were women and, in 1973, 30.8 percent were women. Women's share of principalships declined from 15.3 percent in 1970-71 to 13.5 percent in 1972-73. See also Catherine Dillon Lyon and Terry Saario, "Women in Public Education: Sexual Discrimination in Promotions," *Phi Delta Kappan* LV (October 1973), pp. 120-123.

Table 4

Employed Persons in Selected Education Occupations, 1975, Annual Averages

(In Thousands)

Occupation	Total Employed	Percentage of Total Employed	
		Females	Negro and Other Races
Prekindergarten and Kindergarten Teacher	204	98.6%	14.5%
Elementary School Teacher	1,332	85.4	10.6
Secondary School Teacher	1,184	49.2	7.8
College and University Teacher	543	31.1	6.8

Source: Scientific Manpower Commission, *Professional Women and Minorities, A Manpower Data Research Service*, May 1975, p. 104.1.

26.3 percent of all service workers, 25.3 percent of all laborers, but only 7.3 percent of all administrators and 9.3 percent of all principals. Most minority group members holding top-level jobs are male.

The concentration of women and minorities in lower-status positions means they receive lower salaries. Four out of every 10 minority employees, compared with 2 out of every 10 white employees, were working as poorly paid teacher aides, service personnel or laborers. Eighteen of every 100 women, compared with only 1 of every 100 men, were teacher aides or clerical workers. Women were working more often as lower-paid elementary teachers, and men as higher-paid secondary school teachers.[24] Females were also earning less money than males in similar jobs. The 1970 Bureau of the Census figures for median earnings of white female elementary and prekindergarten teachers who worked 50 to 52 weeks was $7,097; for white males the figure was $8,738. (See Table 5.) Disparity existed between black females and males, as well, with black elementary and prekindergarten teachers earning $6,685 and black males earning $7,793. Inequalities thus existed between the sexes and between races, although experience and education may explain some of the differences.[25]

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[24] U.S. Equal Employment Opportunity Commission, "EEOC Releases 1974 Employment Figures," p. 2.

[25] U.S. Bureau of the Census, *1970 Census of Population, Characteristics of the Population, United States Summary*, Vol. 1, Part 2, Section 2 (Washington, D.C.: U.S. Government Printing Office, 1970).

Table 5

Occupation of Experienced Civilian Labor Force in Education by Earnings in 1969, by Race and Sex, 1970

Category of Teacher	Total, Age 16 and Over	Earnings, Earners Worked 50-52 Weeks
White Female, Elementary and Prekindergarten	1,286,131	$7,097
White Male, Elementary and Prekindergarten	232,699	8,735
Black Female, Elementary and Prekindergarten	126,471	6,685
Black Male, Elementary and Prekindergarten	19,856	7,793
White Female, Secondary	486,423	7,534
White Male, Secondary	509,253	9,501
Black Female, Secondary	39,347	7,032
Black Male, Secondary	27,299	8,479

Source: U.S. Bureau of the Census, *1970 Census of Population, Detailed Occupation of Employed Persons by Race and Sex, United States Summary* (Washington, D.C.: U.S. Government Printing Office, 1971).

Table 6

Racial and Ethnic Characteristics of College and University Teaching Faculty, 1972-73, by Sex

Racial Background	All Institutions (Percent)		
	Men	Women	Total
White/Caucasian	95.1%	93.6%	94.8%
Black/Negro/Afro-American	2.4	4.8	2.9
American Indian	0.8	0.9	0.8
Oriental	1.4	1.7	1.5
Mexican-American/Chicano	0.3	0.2	0.3
Puerto Rican/American	0.3	0.3	0.3
Other	1.5	1.1	1.4

Source: American Council on Education, *Teaching Faculty in Academe*, Research Report Vol. 8, No. 2 (Washington, D.C.: American Council on Education, 1973).

Higher education. Elementary and secondary schools can boast high overall participation rates for women and minorities; higher education cannot, as Table 6 indicates.

Women and minorities are concentrated in the lower ranks of higher education as their salary differentials suggest. According to the 1970 Census, in 1969 the earnings of white female college and university teachers working 50 to 52 weeks was $8,638; white males, $13,126; black females, $7,818; and black males, $10,711. As in elementary and secondary education, disparities in earnings occurred between the sexes, between the races and between the sexes within races.

These figures are not very surprising, for they predate the vigorous movement of the 1970s to redress inequities in employment in higher education. More recent statistics suggest that the effort may have been ineffectual. A study conducted by the National Center for Educational Statistics (NCES) reveals that over the past 15 years, women have made some gains in higher education. (See Table 7.) However, in 1975-76, women's share of faculty positions decreased

Table 7

Women as Percentage of Full-Time Instructional Faculty on 9-10 Month Contracts in Institutions of Higher Education, by Academic Rank: Selected Years, 1962-63 to 1975-76

Academic Rank	1962-63	1972-73	1974-75	1975-76
All Ranks	19.0%	20.6%	24.1%	24.2%
Professors	8.7	9.4	10.1	9.8
Associate Professors	16.1	15.8	17.0	16.8
Assistant Professors	22.5	23.1	27.3	28.6
Instructors	30.9	43.5	41.0	40.5

Source: National Center for Educational Statistics, *Condition of Education* (Washington, D.C.: U.S. Department of Health, Education and Welfare, 1976), Table 6.13.

slightly at every level but assistant professor. Only 26 percent of women faculty, as opposed to 57 percent of their male counterparts, had tenure. Despite the improved representation of women in higher education, NCES noted that their salaries were 82.9 percent those of men's and in 1974 they were 83.2 percent. In 1974, the average salary of a full-time male faculty member on a 9-10 month contract was $15,924; for women the figure was $13,222.[26] These data

[26] National Center for Educational Statistics (NCES), "Prepublication Release, Preliminary Data, January, 1974" (Washington, D.C.: Department of Health, Education and Welfare, Office of the Assistant Secretary for Education, Jan. 29, 1975), Tables B and L.

primarily reflect the distribution of women versus men by academic rank, but universities are now beginning to evaluate the many instances of large salary differences by sex within ranks. AAUP data indicate these differences. (See Table 8.)

Unfortunately, recent and comparable data on minorities' status in higher education do not exist. In 1972-73, the proportion of faculty members who were black was 2.9 percent, up from 2.2 percent in 1968-69.[27] Asians accounted for 1.5 percent of faculty, and "other" minorities for 2.8 percent.[28] Thus, women and minorities still are underrepresented in higher education, particularly in the higher-status, higher-salary ranks.

Table 8

Weighted Average Salaries and Average Compensation for Faculty Members by Sex and Academic Rank, 1975-76

Academic Rank	Men	Women
Professor	$22,970	$20,770
Associate Professor	17,260	16,440
Assistant Professor	14,240	13,630
Instructor	11,620	11,030
All Ranks	17,840	14,420

Source: *AAUP Bulletin*, 62 (August 1976).

Layoffs

Since K-12 teachers are predominately female, retrenchment at that level is somewhat less of a threat to women than to minorities. Nevertheless, it should be noted that as early as 1970, unemployment rates for experienced teachers were twice as high for women as for men. (See Table 9.) Also, teachers have weathered decline more poorly than administrators, who are predominately male.[29] A survey in Illinois indicates that the number of administrators in K-12 districts increased by approximately 9.0 percent from 1969-70 to 1973-74, while the number of teachers decreased by approximately 1.0 percent.

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[27] Alan E. Bayer, *Teaching Faculty in Academe: 1972-73* (Washington, D.C.: American Council on Education Research Reports, Aug. 25, 1973), p. 14.

[28] Carnegie Council on Policy Studies in Higher Education, *Making Affirmative Action Work in Higher Education* (New York: Carnegie Foundation for the Advancement of Teaching, 1975), p. 39.

[29] Corroborating evidence is that administrative expenditures have tended to grow faster than instructional expenditures during the downturn in enrollments. See Allan Odden and Phillip E. Vincent, *The Fiscal Impacts of Declining Enrollments*.

Table 9

Experienced Teachers Who Were Unemployed in 1970 by Sex and Type of Teaching Background

Type of Teaching Background	Males			Females		
	Total Teaching	Unemployed	% Unemployed	Total Teaching	Total Unemployed	% Unemployed
All Types of Teaching	1,173,914	8,216	.7%	2,108,281	32,357	1.5%
Colleges and Universities	354,671	2,242	.6%	141,741	2,463	1.7%
Elementary	235,189	1,919	.8%	1,340,627	20,028	1.5%
Secondary	510,768	2,811	.6%	492,822	7,231	1.5%
Other	73,286	1,244	1.7%	133,091	2,635	2.0%

Source: U.S. Bureau of Census, *1970 Census of Population, Subject Reports: Persons Not Employed* (Washington, D.C.: U.S. Government Printing Office, 1972), Table 23.

Although data have not been collected systematically, isolated reports suggest that retrenchment may have dramatic impact on minorities in K-12 teaching positions. New York City provides the most persuasive evidence that minorities in K-12 positions may be severely hurt by retrenchment. Between 1970-71 and 1973-74, the number of minority teachers in that city's system increased 33.2 percent. At the onset of retrenchment, the school board admitted that layoffs by seniority would "undo the first real progress . . . made in the area of equal employment opportunity and staff integration." The board's prediction has been borne out: although minority teachers represent less than 13 percent of the total teaching staff in New York City public schools, they comprise 40 percent of the teachers terminated and 27 percent of the regular substitutes not reassigned during 1975-76.[30] (See Table 10.)

Table 10

Ethnic Census of Teachers Laid Off and Regular Substitute Teachers Not Reassigned, 1975-1976

	Minority		Other		
	Number	Percent	Number	Percent	Total
NTE*	718	40.0%	1,069	60.0%	1,787
Regular Substitute	2,052	27.0%	5,548	73.0%	7,600
Total	2,770	30.0%	6,617	70.0%	9,387

Source: Director of Office of Personnel, Data Research and Reports, Division of Personnel, NYC Board of Education, *Seniority and Layoffs*, October 1975, p. 2.

*Those substitutes hired on the basis of National Teachers Examination.

Layoffs of women in higher education are suggested in a survey of women faculty in sociology departments from 1973 to 1975, conducted by Sociologists for Women in Society. It indicates that in 1973, 20 percent of the senior professorships in eight City University of New York (CUNY) sociology departments were held by women; in 1975 the figure had dropped to 18.6 percent. Women associate professors fared even worse, with their share declining from 25.8 percent in 1973 to 20 percent in 1975.

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[30] Board of Education, City of New York, *Seniority and Layoffs: A Review of Recent Court Decisions and Their Possible Impact on the New York City Public Schools* (New York: Office of the Deputy Chancellor, Educational Policy Development Unit, November 1975), p. 11.

III. SENIORITY AND TENURE: CONFLICTS AND COMPROMISES WITH AFFIRMATIVE ACTION

Seniority, broadly defined, is an employee's length of continuous service with an employer. Seniority and tenure provisions of formal or informal employment contracts have become ingrained in education. Traditionally, tenure in higher education has been associated more with "academic freedom," the right to search for truth and be free of undue political pressures, than with job security, the more likely rationale in elementary and secondary education. Seniority has also become one rationale for advancement and salary increase.

Seniority and Women and Minorities

Critics assert that the use of seniority as a criterion for layoffs will adversely affect women and minorities. First, women and minorities have distinct length-of-service disadvantages and higher levels of part-time employment generally not subject to seniority provisions. Second, women and minorities who have been discriminated against in the labor market have not had the opportunity to develop seniority on a job because their hiring has been recent. Finally, collective bargaining provisions often have been insensitive to the needs of minorities and women. Fratkin has noted that:

> In education, men, women and minorities all belong to the same union, but the union contract has, in the past, institutionalized the discrimination which previously existed. In other words, most unions accepted the prevailing social climate and as a result, until the first Civil Rights laws in 1964, a conflict did not exist between affirmative action and collective bargaining, as the former simply did not exist.[31]

The disadvantages of women and minorities in length of service are well documented. Bureau of Labor statistics on job tenure — the length of time a person has worked continuously for the same employer — show that, as of 1973, men had more tenure than women in every industrial sector and employment category except unpaid family worker. For the labor force, the median number of years of job tenure for white males was 4.7 and for white females, 2.8; for black males, the figure was 4.0, and for black females, 3.3. (See Table 11.) Nearly half of the females had been on their job for

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[31] Susan Fratkin, " Collective Bargaining and Affirmative Action," paper presented at the third annual conference of the National Center for the Study of Collective Bargaining in Higher Education, Baruch College, New York, April 29, 1975, p. 1.

Table 11

Median Years on Current Job, by Race, Sex and Age of Worker, January 1973

Age	White		Negro and Other Races	
	Men	Women	Men	Women
Total	4.7	2.2	4.0	3.3
15 to 24 years	.8	.8	.9	.8
25 to 34 years	3.3	2.1	3.0	2.7
35 to 44 years	6.8	3.4	5.4	4.7
45 to 54 years	11.7	5.8	10.1	6.8
55 years and over	14.6	9.9	11.0	9.8
55 to 64 years	14.8	8.8	11.6	9.2
65 years and over	14.2	10.8	9.3	11.5

Source: Howard Hayghe, "Job Tenure for Workers: January 1973," *Monthly Labor Review*, (December 1974), p. 53.

two years or less; only six percent had been at the same job for 20 years or more. (See Table 12.) The percentages of men with job service of two years or less and 20 years or more were 33 percent and 22 percent, respectively. Lengths of service for male and female employees over the age of 25, the prime working age group were notably dissimilar. These figures result from women withdrawing from the labor force in order to rear a family. Finally, black men report less time on a given job than white men in all age categories; black women had more time on the job than white women.

Part-time work experience, usually not rewarded by seniority, is also more common for female employees than for males. In 1973, for

Table 12

Workers by Length of Time on Current Job

	Women	Men
One year or less	29%	22%
1-2 years	14	11
2-5 years	23	20
5-10 years	16	17
10-20 years	12	16
20 or more years	6	14

Source: Howard Hayghe, "Job Tenure for Workers: January 1973," *Monthly Labor Review*, (December 1974), compiled from Table 1.

example, 31.9 percent of women worked fewer than 34 hours a week. (See Table 13.) Only 12.6 percent of men worked on a comparable part-time basis. For persons who worked part-time and have accrued continuous length of service, seniority-based layoffs may seem to be less than neutral.

Attempts to eliminate employment discrimination based on sex and race have complicated seniority. Many agencies that did not hire or rarely hired women and blacks prior to the late 1960s are now required to have affirmative action programs. After implementation began, employers faced a severe recession. Employers who had to reduce their labor force had to choose between compliance with their affirmative action agreements or with seniority provisions of their labor contracts, which required that the last hired should be the first fired. Craft summed up the ensuing dilemma:

> The conflict between this widely accepted use of seniority and equal employment had become apparent with the recent economic recession. With the advent of the economic downturn . . .companies were compelled to reduce their work forces. Applying the well established and generally accepted seniority principle in layoffs led to a disproportionate reduction of blacks, females and other minorities recently hired under affirmative action programs.[32]

Seniority can be looked at in two ways. On the one hand, even if seniority is plantwide — that is, calculated on the basis of a whole plant or campus rather than on their individual units or departments, a practice that hurts minorities and women — it perpetuates past discrimination, because women and minorities will still be fired first. On the other hand, seniority can be viewed as being neutral — the "only safeguard against capricious or selective layoffs which most harm women and minority group members."[33] While the seniority system, some supporters contend, continues the effects of past discrimination, it was not designed to affect any group. Therefore, abandoning seniority would ultimately hurt individuals who had not participated in discrimination.

The position that strict seniority is incompatible with affirmative action requires employers to maintain separate seniority lists for white males, females and minorities, resulting in the maintenance of the racial ratio extant before layoffs occurred.

Several attempts have been made to modify the use of strict seniority systems. At a recent meeting of the American Federation of Teachers

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[32] James A. Craft, "Equal Opportunity and Seniority: Trends and Manpower Implications," *Labor Law Journal* (December 1975), p. 753.

[33] "Union Seniority Clauses Termed Safeguards for Women, Minorities," *CLUW News*, 1 (Summer 1975), p. 1.

Table 13

Full-Time and Part-Time Work Experience of Persons 16 Years Old and Over, by Sex, 1971-1973

	Both Sexes			Men			Women		
	71	72	73	71	72	73	71	72	73
Percent of Total Working	68.2%	68.2%	68.9%	87.7%	84.5%	84.4%	53.4%	53.7%	55.0%
Percent Working Full Time	79.4	80.4	79.3	87.2	87.7	87.4	68.1	69.2	68.1
Percent Working Part Time*	20.6	20.0	20.7	12.8	12.3	12.6	31.9	30.8	31.9

*Part-time work is defined as 1-34 hours of work per week.

Source: Anne M. Young, "Work Experience of the Population, 1973" *Monthly Labor Review*, (December 1974), compiled from Table 1.

(AFT), a predominately black local introduced the following resolution:

> Whereas, in times of a justifiable reduction in the work force traditionally layoffs are made in conformance with an existing seniority system, and teachers hired under an Affirmative Action program would be among those with low seniority and would be the first to go ... Be it therefore resolved that this 60th Annual Convention of the AFT call for construction of seniority clauses in the collective bargaining agreements that will make it possible to carry out the objectives of both agreements (seniority and affirmative action) to the fullest extent possible.[34]

The motion was tabled. In higher education, the New Jersey Conference submitted a proposal to the AAUP that fared no better. Calling for "affirmative retention," they stated that "cutbacks should not be implemented in such a way as to compromise any achievements of affirmative action programs for women and minorities...." The conference recommended that prevailing racial and sex ratios should be maintained.[35]

Even the courts have been asked to deal with this question by addressing three important issues. First, should employers who discriminated in the past make compensation for lack of promotion and seniority of those who have been discriminated against? Second, should strict seniority have precedence over racial goals that have been effectively imposed, often by court order? Third, should retroactive seniority be awarded?

On the first issue, in June 1976, U.S. District Judge Gerhard Gesell ruled that a male plaintiff who had been denied a promotion in favor of a woman who had scored lower on a qualifying scale was not entitled to the promotion, but was entitled to money damages from his employer. Since the employer and not the employee had discriminated in the past, the worker should not have to bear the full burden of redressing the employer's discriminatory practices.[36]

The second issue has been explored in a recent New York case that was decided in favor of seniority when it conflicted with racial goals. To protect jobs of recently appointed black or Puerto Rican principals and supervisors, a federal district judge ruled that each school district could place black and Puerto Rican supervisors on an excessing list only "if the percentage of that group on the list does not

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[34] Gregg W. Downey, "What School Boards Do When that Irresistible Force Called Reduction in Force Meets that Immovable Object Called Affirmative Action," *American School Board Journal*, 163 (October 1976), p. 38.

[35] *AAUP Bulletin* (August 1976), pp. 180-81.

[36] See, for example, "Seniority and Civil Rights," *Chronicle of Higher Education*, 18 (December 1976), p. 12.

exceed the percentage of that group in the district." Upon appeal from the school board, the U.S. Court of Appeals for the Second Circuit reversed the lower-court judge, noting that "if racial quotas prevent the excessing of a black or Puerto Rican, a white person with greater seniority must be excessed in his place." Therefore, the court reasoned. the consequence was reverse discrimination. A dissenting opinion contended that efforts to remedy past discrimination should include altering the "bona fide seniority system . . .even if that seniority system does not itself independently constitute an unlawful employment practice." The majority, however, countered that the "excessing practices were not discriminatory, that the racial quota did not address any discriminatory feature of seniority but rather that there be a specified quota of blacks and Puerto Rican in the New York City school system."[37]

The third issue was first addressed in March 1976, when retroactive seniority became a tool to protect the civil rights of minorities and, by implication, women. In a landmark civil rights ruling, the U.S. Supreme Court declared in *Franks v. Bowman* that blacks denied jobs in violation of the Civil Rights Act of 1964 must be awarded retroactive seniority once they secured those jobs. Thus, blacks must be given the same seniority they would have received had they landed the job without discrimination. Along with seniority, they are entitled to rights and pension benefits deriving from the date of what would have been their initial employment. (Judge Gesell referred to this decision in making the ruling alluded to above.) The ruling applies on a case-by-case basis: the aggrieved person must prove in federal court that he or she was denied the job in question because of unlawful discrimination after Title VII went into effect.[38]

The Supreme Court ruling also reversed several lower-court decisions stating that Title VII did not require granting retroactive seniority. However, according to Oelsner: "The decision leaves unanswered the question whether retroactive seniority is to be awarded to a person who was denied a job on the basis of race or sex before the enactment of Title VII or to a person who did not initially apply for a job because it was well known in the community that the employer did not hire blacks."[39] The court did, however, address the issue of seniority and affirmative action, acknowledging that retroactive seniority was necessary to accomplish the goals of the Civil Rights Act. The court thus managed to endorse seniority as an important and just criterion for layoffs or related actions. By simultaneously affirming seniority and bolstering the campaign to redress discrimination, the court undercut much criticism directed against seniority during the recent recession.

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[37] *Integrateducation*, 14 (May-June 1976), pp. 53-54.

[38] Lesley Oelsner, "High Court Grants Blacks Retroactive Job Seniority," *New York Times*, March 24, 1976.

[39] Lesley Oelsner, "High Court Grants Blacks Retroactive Job Seniority."

A Supreme Court decision, while often settling profound questions, leaves many issues unanswered. School systems are still grappling with the issue of seniority and affirmative action. In New York City a court decision ordered that school employees should receive "constructive seniority" in order to offset past discrimination, resulting from the use of tests as a basis for hiring. A spokesperson said: "We've been ordered to go back many years and determine what tests black and Hispanic personnel might have taken but didn't, or did take and failed. Based on this information, we're supposed to work out a system to give them additional seniority."[40] The Supreme Court decision is apparently playing a role in New York City schools.

Shortly thereafter, in November 1976, the Office for Civil Rights charged that the New York City system had discriminated against women and minority teachers in hiring, promotion and assignment.[41] The civil rights agency gave the city 90 days to develop an interim plan or lose $200 million in federal education funds. Charges facing the school system are that its examinations for hiring were discriminatory, women were denied access to administrative positions and female teachers were denied fair seniority rights because of past discriminatory leave policies.[42]

Tenure

The difference between tenure and seniority is that seniority is cumulative from a specific date, while tenure status is reached after a requisite time period and provides due process in the event of dismissal. Tenure is awarded ostensively on the basis of ability and accomplishment. Seniority exists independently of other criteria. A coveted prize, tenure presumably guarantees — barring some heinous act — the continued employment of a teacher. General dismissal of tenured teachers was unheard of until recently.

According to a survey by the American Council on Education (ACE), the proportion of colleges with tenure remained about 85 percent between 1972 and 1974. However, during the past few years, some institutions have dropped tenure and most institutions are granting it to fewer and fewer faculty members. A number of problems have led management in higher education to reevaluate tenure, and finan-

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[40] Gregg W. Downey, "What School Boards Do When That Irresistible Force Called Reduction in Force Meets that Immovable Object Called Affirmative Action," pp. 36-37.

[41] Lena Williams, "School Job Bias in NYC Charged by US," *New York Times*, Nov. 10, 1976.

[42] Letter from Martin H. Gerry, Director, Office of Civil Rights to Chancellor Irving Anker, Board of Education of the City of New York, Nov. 9, 1976.

cial exigency is perhaps the most pressing. Slower growth in enrollment and fear of its decline, higher costs and less money and fewer new faculty positions have made colleges cautious. They fear that too many tenured faculty members would reduce their flexibility. Between 1968-69 and 1972-73, the proportion of the nation's tenured professors increased from 50 percent to 65 percent. Some institutions have placed quotas on tenure: in 1972, 5.9 percent of institutions of higher education reported that they limited the percentage of tenured faculty; in 1974, the figure was 9.3 percent.[43]

A second issue leading administrators to question tenure is the growth of unionization and collective bargaining. Collective bargaining emerged on campus in 1969 when the first union contracts took effect at major colleges and universities. By 1975, faculties at more than 400 of the nation's 2,400 institutions of higher education had voted to unionize. Despite this trend, some commentators argue that unionization and higher education may not be compatible. According to Chait and Ford, unions are pledged to protect their members equally, while tenure gives special protection to certain designated professors.[44] According to the *School Law Newsletter*, "tenure is losing ground as a legal concept and reliance on procedural due process is mushrooming."[45] This may be particularly true in institutions where the AAUP is the bargaining agent; while the association traditionally had provided more protection to the tenured faculty member, in 1972 it moved to expand the rights of the nontenured. The NEA provides essentially the same protections of due process to tenured and nontenured professors.

The third issue affecting tenure is affirmative action. As of this writing, no court decisions in higher education have addressed affirmative action and layoffs or affirmative action and tenure. Chait and Ford contend that tenure conflicts with affirmative action, citing that in order to attain tenure, a faculty member must demonstrate continuous service; such service generally occurs between the ages of 26 and 32, a woman's childbearing years. Thus, a woman who withdraws from her job while her children are infants is at a disadvantage.[46] Tenure and affirmative action also can conflict in a layoff situation. Far fewer women and minorities have tenure than white males and are thus particularly vulnerable to layoffs.

The questioning of tenure by supporters of affirmative action is somewhat ironic. Women and minorities, who only recently have secured

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[43] Elaine H. El-Khawas and W. Todd Furniss, "Faculty Tenure and Contract Systems: 1972 and 1974," American Council on Education Survey, reported in "Fact File," *Chronicle of Higher Education*, Feb. 18, 1976, p. 9.

[44] Richard Chait and Andrew T. Ford, "Affirmative Action, Tenure and Unionization: Can There Be Peaceful Coexistence?" ERIC Ed. 090 808, 1973.

[45] *School Law Newsletter*, 6, No. 1. (n.d., probably 1976).

[46] Richard Chait and Andrew T. Ford, "Affirmative Action, Tenure and Unionization: Can There Be Peaceful Coexistence?"

jobs in higher education, will not be eligible for the security that tenure implies if it is eliminated. On the other hand, tenure presently threatens the job security of women and minorities who do not have it.

Increasing reliance on due process in academic job decisions, however, whether or not this supplements or replaces tenure, is encouraging to women and minorities. The *School Law Newsletter* summarizes due process as it affects all employees of education institutions.[47] Where due process has been implemented, staff employed for one year may have no expectancy of reemployment and may be terminated at the end of the contract. A staff member who serves for a given number of years, in some cases five, earns *de facto* tenure and an expectancy of reemployment. Such employment cannot be terminated at the end of the agreed-to-period without a due process hearing at which the employee can question the termination. In one sense, then, the trend is toward increasing fairness to the staff member, at least for employees with some seniority. First-year employees, however, many of whom may be women and minorities, at least where affirmative action programs have been implemented, remain vulnerable to dismissal.

These issues have been brought to the forefront by a late 1975 AAUP challenge to the issue of tenure. In *Browzin v. Catholic University*, a federal appeals court ruled that "a college or university which bumps a tenured professor from its staff because it discontinues courses for financial reasons must try to find the professor a new job."[48] The ruling was an affirmation of the AAUP's regulations governing tenured professors. This ruling has not, however, discouraged universities from laying off or dismissing tenured faculty members, and more court cases will have to be decided before an assessment can be made of the success of the AAUP's tenure/layoff policies. The Professional Staff Congress (PSC) at the City University of New York (CUNY) on September 2, 1976, brought a federal class-action suit protesting the layoff of approximately 1,050 professional and technical personnel, 132 of them with tenure. The suit encompasses far more than the rights of tenured faculty, and its outcome is likely to be closely watched by academic persons.[49]

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[47] *School Law Newsletter*, 6, No. 1 (n.d., probably 1976).

[48] "The Faculty Shuffle: Court Clarifies Layoff Rules?" *Equal Opportunity in Higher Education*, 5 (January 1976), p. 5.

[49] "Federal Suit Challenges 1050 Firings at City University," PSC news release, Sept. 2, 1976, p. 1.

IV. PROSPECTS AND POLICIES

Although evidence on effects of retrenchment on women and minorities in education is not substantial, the conflicts among affirmative action, seniority and tenure are beginning to be faced. This concluding section examines in more detail attempts to resolve the potential difficulties as well as proposed alternatives to layoffs or reductions in force.

Collective Bargaining, Affirmative Action and Layoffs

Negotiated agreements that can be used to preserve affirmative action gains is not a widespread phenomenon. Attempts to represent women and minorities in labor negotiations usually are perceived as conflicting with the seniority principle. The status of affirmative action agreements is in flux: guidelines are issued, overruled, appealed, reinstated and overruled. This section will describe a few agreements that have overruled strict seniority in order to protect recent gains of women and minorities.

In Ann Arbor, Michigan, the collective bargaining agreement countered the last-hired, first-fired effect by prescribing separate seniority groups for undefined racial categories so as to maintain racial ratios. In Lansing, Michigan, first-year, probationary and ethnic-minority teachers were exempted from seniority-mandated reductions under the following arrangement: "If, at anytime, the percentage of ethnic minority teaching personnel reaches the ethnic minority student population percentage norm, further staff reduction shall result in maintaining a racial balance among staff no lower than the existing student ratio."[50] The Michigan Civil Rights Commission has vigorously sought to preserve minority gains. Concerned about the heavy impact of layoffs on recently hired women and minorities, the commission emphasized in a policy statement in 1975 that, while it was not seeking to end seniority practices, in such cases where seniority perpetuated the effects of past discrimination, it would seek to modify the system. Finally, it pledged to review carefully "any case where it is found that a layoff-recall system perpetuated the present effects of past discrimination."[51]

The Washington Education Association, which represents the majority of state elementary and secondary school teachers, has supported

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[50] Thomas Saucedo, "Negotiated Reduction-in-Force Provisions," *Negotiations Research Digest*, June 1975, p. 18.

[51] Michigan Civil Rights Commission, policy statement, Aug. 26, 1973, p. 3.

efforts to maintain women and minorities in school systems that have had discriminatory practices. The association agreed to dual layoff systems when justified in accordance with the positions and provisions enunciated by the Human Rights Commission. The response of the superintendent of public instruction was to apprise all relevant persons and agencies that:

> RIF (reduction in force) policies must adhere to affirmative action principles in order for the school districts' affirmative action in employment program (policy and implementation plan) to be considered a "good faith effort." Effective immediately, reduction in force policies and implementing practices and procedures are required of all school districts as a component of their affirmative action in employment programs. . . .[52]

Affirmative retention is new to collective bargaining, and its success depends largely upon the good will of the local teachers' associations. Past discrimination is an undisputed fact. But efforts have been made to redress this inequity. The possibility still exists that layoffs on the basis of strict seniority might erode the legitimate gains of women and minorities. Seniority and affirmative action appear to be in conflict, especially if rigidly defined. The NEA has strongly urged all local affiliates to adopt affirmative retention language in their negotiated agreements and to modify seniority policies so that women and minorities are not disproportionately affected.[53] Affirmative retention through collective bargaining can represent the aims of an **entire** teacher organization.

The most comprehensive discussion of policy issues related to retrenchment on women and minorities is that by Raymond E. Schultz.[54] Schultz concludes that strict length-of-service criteria for staff reductions would offer the least financial relief to an institution, hurt women and minorities and deprive institutions of creative ideas of new and young faculty. In what he terms a "sane approach to staff reductions," Schultz recommends that an institution keep up-to-date data on enrollment and programs and calculate trends; pinpoint programs and courses where overstaffing and understaffing exist or seem likely to occur; reduce nonsalary expenditures; make available such voluntary cost reductions as leaves and early retirements; consider the termination of nontenured, part-time and tenured faculty according to the needs of the institution and the requirements of equal employment as well as seniority; and place terminated faculty on furlough rather than layoff.

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[52] Superintendent of Public Instruction, Washington State, Bulletin No. 2-76, Executive Services, May 10, 1976.

[53] National Education Association, "Employment Affirmative Action through Collective Bargaining," n.d., p. 29.

[54] Raymond E. Schultz, "A Sane Approach to Staff Reductions," *Community College Review* (Jan. 3, 1976).

Alternatives to Layoffs[55]

Work-sharing. The Commission on Academic Tenure in Higher Education advocated a plan of work-sharing as an alternative to layoffs. The latter part of the commission's report expressed concern that full-time tenure positions are an obstacle to the pursuit of academic careers by women. Part-time appointments with tenure can assure employment of the greatest number of teachers during a time of retrenchment. Precedent exists for modifying tenure systems to recognize part-time service. For example, at Columbia University and Princeton University, part-time career appointments carrying tenure are available to faculty members eligible for promotion to all ranks.

Hiring freezes. Most institutions of higher education now undergoing or expecting financial exigency are planning hiring freezes. Natural attrition to reduce faculty ranks is in some ways preferable to laying off, but it is not without problems for prospective employees and institutions as well. First, institutions do not, at least in the short run, save by freezing hiring; senior faculty and staff command higher salaries and benefits than the newly hired. With depressed economic conditions, senior faculty and staff are also likely to put off retirement as long as possible. Thus, in the immediate future, hiring freezes are more likely to maintain costs than to cut them. While hiring freezes in lieu of layoffs may preserve the jobs of newly hired women and minorities, women and minorities are, ironically, the ones most likely to be frozen out of hiring.

Early retirement. In reports on alternatives to layoffs and cost-cutting techniques, early retirement emerges as the favored measure.[56] One district that has used this method to advantage is the Pasadena Unified School District, which has encouraged teachers at the maximum salary to retire early. Retirees are retained by the district as consultants for a maximum of 20 days per year for a period of five years, or to age 65, whichever comes first. Prior to September 1972, 33 Pasadena teachers and administrators were participating in the program, and the district saved $105,000 by not filling their positions or by hiring people at the bottom of the salary schedule.

Formidable obstacles, however, thwart early retirement programs. Retirement benefits for teachers tend to be determined by legislation on an individual state-by-state basis and are not subject to collective

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[55] For the most comprehensive discussion of this topic, see Edith Lynton, *Alternatives to Layoffs*, report of a conference held by the New York City Commission on Human Rights, April 3-4, 1975 (New York: New York City Commission on Human Rights, 1975).

[56] National Education Association, "Reductions in Force Among Teachers from the Local Association's Perspective: A Challenge Posed by an Emerging Problem," n.d., pp. 45-47.

bargaining. Consequently, improvements in retirement-benefit programs often require legislative action.[57]

New clientele. Financially strapped schools have not only developed cost-cutting techniques. Education institutions, especially the AFT, have sought new clientele. According to the AFT, declining enrollments and teacher oversupply may be countered with strategies for expanding the functions of schools and broadening the population that they serve. The AFT has proposed a new, comprehensive program called Educare, which includes three major components. The first proposal, universal early childhood education, calls for the public schools to become involved in the care and education of children below the age of 6. The second, lifelong education, would expand the public school system to include extensive adult education and retraining opportunities. Under the lifelong-education proposal, adults wishing to return to school for retraining and job upgrading, and those who enjoy learning, would be offered a variety of public school opportunities heretofore available only to veterans covered by the G.I. Bill of Rights. The third aspect of the Educare proposal calls for more thorough teacher training. According to this proposal, graduates from teacher-training institutions would receive practical, intensive, on-the-job training under the tutelage of experienced teachers before assuming responsibility for their own classes. The intern teacher would serve in such a capacity for a period of one, two or three years, in a manner analogous to a medical internship.[58] Supporters note that Educare would prevent widespread layoffs and unemployment among teachers.[59]

Higher-education is also seeking to expand its clientele; there the efforts are less politically volatile. Colleges and universities are particularly trying to attract older students and are beginning to offer more job-related programs.

Affirmative retention. How to reconcile affirmative action and seniority remains a difficult question. The AAUP holds that, while termination policies should strictly respect seniority, they should also involve "considerations of educational policy, including affirmative action, as well as of faculty status. . . ."[60] The AAUP refused to adopt a proposal in support of affirmative retention, under the terms of which prevailing ratios of women and minority faculty would be maintained in periods of layoff, explaining that their position was

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[57] National Education Association, "Reductions in Force Among Teachers from the Local Association's Viewpoint," pp. 45-46.

[58] Robert Baherman, "Educare and the Teacher Internship Concept," American Federation of Teachers and the AFT Early Childhood Education Information Package.

[59] Criticisms of Educare include: 1) it is expensive and would require infusion of additional funds and 2) it may not be the best public policy to make public schools responsible for early childhood and daycare programs.

[60] *AAUP Bulletin*, (August 1976), p. 181.

already clear. The actions of the AFT have been similar.[61] The only higher education collective-bargaining association to deal explicitly with the issue of affirmative retention is the NEA. Noting that layoffs based solely on seniority might lead to the erosion of female and minority representation in teaching and administration, the NEA has advocated affirmative retention provisions.

In Pennsylvania, a management directive from the governor's office held that, as part of the approved plan for retrenchment of employees in the state colleges, "women and minorities shall be maintained in determining which persons are assigned to the positions remaining after the retrenchment discussions and planning have resulted in a projection of reduced employment. The pre-retrenchment percentages of representation of white males, women and minorities in each bargaining unit shall be maintained after the final layoff list has been prepared."[62] In a recently negotiated contract at Southeastern Massachusetts University, the tension between representation of women and minorities and seniority was resolved by adherence to straight seniority for current faculty and division of those hired after the contract took effect into two seniority lists — one for women and members of minority groups and the other for white males. Any future layoffs are to be divided between these two lists.[63]

These provisions are exceptional; how they would fare under legal challenge is open to question. Far more common are provisions that, while acknowledging the problem, are vague on its resolution. Temple University and the AAUP agreed, with the obscurity typical of most affirmative retention provisions: "Whenever possible, retrenchment should be consistent with the university's moral and legal commitment to Affirmative Action."[64]

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[61] Gregg Downey, "What School Boards Do When that Irresistible Force Called Reduction in Force Meets that Immovable Object Called Affirmative Action," p. 35.

[62] Commonwealth of Pennsylvania, Governor's Office, Management Directive #410.3, June 10, 1975.

[63] Phillip W. Semas, "Faculty Unions Focus on Job Security," *Chronicle of Higher Education* (Nov. 1, 1976), p. 3.

[64] Agreement between Temple University and the AAUP, Article VII D, p. 16.

CONCLUSION

This paper has aimed toward understanding problems in education springing from the impact of declining employment opportunities, on underrepresented groups, minorities and women. The effects of retrenchment in education on women and minorities cannot yet be clearly known, although they can be anticipated with some assurance. It is hoped that discussion of what has been part of retrenchment — recession, inflation, declining enrollments, oversupply of teachers and layoffs — has helped toward a comprehension of actual policies that may be hindering women and minorities at all levels in education. Policy alternatives to seniority and tenure, at this time, are work-sharing, hiring freezes, early retirement, new clientele and affirmative retention. More successful remedies to eliminate inequity that disproportionately affects women and minorities must be found: to do less would be to abandon a significant portion of the population and to repudiate a long struggle for equity and equal opportunity.